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5
 6 UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF WASHINGTON
 (HONORABLE WM. FREMMING NIELSEN)

7 UNITED STATES OF AMERICA,)
 8)
 Plaintiff,) CR-08-6033-WFN-1
 9)
 vs.) DEFENDANT'S SENTENCING
 10) MEMORANDUM
 KENNETH MAYNARD WILLIAMS,)
 11)
 Defendant.)
 12)

13 TO: MICHAEL C. ORMSBY, UNITED STATES ATTORNEY
 ALEXANDER C. EKSTROM, ASSISTANT UNITED STATES ATTORNEY
 DAVID MCCARY, UNITED STATES PROBATION

14 KENNETH MAYNARD WILLIAMS, through counsel, Alison K.
 15 Guernsey for the Federal Defenders of Eastern Washington and Idaho,
 16 submits the following memorandum in support of his request for a sentence
 17 of 10 months' imprisonment and termination of his federal supervision.

18 **I. BACKGROUND**

19 On October 9, 2012, this Court held a supervised-release revocation
 20 hearing, at which Mr. Williams contested all three allegations. Following
 21 the hearing, the Court dismissed allegations 2 and 3 and found that Mr.
 22 Williams violated allegation number 1—that he not commit another state,
 23 federal, or local offense. *See* ECF No. 255 (Order at 2). This latter
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1 violation was premised on Mr. Williams's entry of an *Alford* plea to third-
2 degree assault in Benton County. In light of the Court's finding, under the
3 U.S. Sentencing Guidelines, Mr. Williams faces a advisory Guideline range
4 of 18 to 24 months' imprisonment. This calculation is based on the fact
5 that a third-degree assault is a Grade B violation. *See* U.S.S.G. §
6 7B1.1(a)(2). His original Criminal History Category was V, and the
7 original offense Class was C. *Id.* § 7B1.4.

8 II. ANALYSIS

9 When imposing a sentence for a violation of supervised release, the
10 Court is required to consider several of the factors set forth in 18 U.S.C. §
11 3553(a). *See* 18 U.S.C. § 3583(e). "The district court, however, is not to
12 consider 'the need for the sentence imposed to reflect the seriousness of the
13 offense, to promote respect for the law, and to provide just punishment for
14 the offense.'" *United States v. Hammons*, 558 F.3d 1100, 1104 (9th Cir.
15 2009). "This means that at a revocation sentencing, a court may
16 appropriately sanction a violator for his 'breach of trust,' but may not
17 punish him for the criminal conduct underlying the revocation." *Id.*
18 (internal quotation marks omitted).

19 Here, the balance of the factors that this Court is permitted to
20 consider under the law support a sentence of 10 months' imprisonment to
21 be followed by no additional term of supervision.

22 A. Nature and Circumstances of the Offense

23 First, looking at the nature and circumstances of the offense, Mr.
24

1 Williams maintains his factual innocence to the third-degree assault. As
2 articulated previously, he entered an *Alford* plea. In the State of
3 Washington, “by entering an *Alford* plea,” a defendant “has not admitted
4 committing the crime.” *Clark v. Baines*, 84 P.3d 245, 251 (Wash. 2004).
5 Moreover, this is not a case where the record indicates that Mr. Williams
6 committed the assault and was merely given the benefit of being allowed
7 to maintain factual innocence as part of a plea bargain. Instead, the
8 prosecution had serious problems with its case.

9 In fact, there is no greater evidence of the questions surrounding Mr.
10 Williams’s guilt than the pleading that Deputy Prosecuting Attorney
11 Megan A. Whitmire filed in state court. Among other things, this pleading
12 revealed that there was a witness willing to testify at trial that the alleged
13 assault victim “called the police to get [Mr. Williams] into trouble because
14 [Mr. Williams] had accused [the victim] of stealing from him.” *See* ECF No.
15 249 (Exhibit A Statement of Prosecutor).

16 Had Mr. Williams been allowed to testify as to the facts underlying
17 the conviction at the supervised-release revocation hearing, he would have
18 confirmed to the Court that he did not assault either Ms. Jones or Mr.
19 Dave Baker that evening. And Mr. Williams’s wife would have testified
20 that as she was cleaning up the rental property, she uncovered that Ms.
21 Jones and Mr. Baker had secreted away hundreds of Mr. Williams’s tools.

22 Sadly, despite his innocence, Mr. Williams pleaded guilty to the
23 assault. Given his criminal history, the sentencing exposure in the state
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1 and the risk that the case would “go federal” was too high. Simply stated,
2 Mr. Williams did not want to run the risk of never again seeing his
3 children. When the State offered a fourteen-month plea deal, he jumped.
4 The nature and circumstances of the violation support a sentence of 10
5 months’ imprisonment to be followed by no further federal supervision.

6 **B. History and Characteristics of Mr. Williams**

7 Second, the history and characteristics of Mr. Williams also support
8 the proposed sentence. Prior to his arrest, Mr. Williams was the model for
9 this District’s Sobriety Treatment Education Program (“STEP”). He was
10 just six weeks away from graduating and, by all accounts, was doing well.
11 Given the Court’s familiarity with the STEP program, Mr. Williams has
12 requested that the Court review his progress reports prior to imposing
13 sentence. *See Exhibit A (STEP Progress Reports)*. They uniformly
14 demonstrate that while he suffered some setbacks, Mr. Williams had
15 turned his life around.

16 The same positive progress is readily evident from Mr. Williams’s
17 “Phase 4” writing assignment, *see Exhibit B*, and his selected STEP
18 workbook entries, *see Exhibit C*. The most compelling evidence of his
19 transformation, however, is the glowing letters that his family has written
20 to this Court in support of Mr. Williams. *See Exhibit D (Family Letters)*.
21 They demonstrate that, after STEP, Mr. Williams was not the same
22 person. He was a better husband, father, community member, and,
23 frankly, a better human being. *See id.*

1 **C. Need to Afford Adequate Deterrence and Protect the Public**

2 Third, the need to deter Mr. Williams and thereby protect the public
3 also supports a sentence of ten months' imprisonment with no continued
4 supervision. Again, Mr. Williams pleaded guilty to the state offense in an
5 effort to continue with the goals that he had established while in STEP—to
6 be a present and good family man who provided for his children and wife
7 both economically and emotionally. *See* Exhibit C (Workbook Entries).
8 The fourteen-month deal that the State offered ensured that he was home
9 with his family fairly quickly.

10 Moreover, a ten-month sentence in federal court is the functional
11 equivalent of the twenty-four month sentence that both the Government
12 and the U.S. Probation Office are requesting. The timing in Mr. Williams's
13 case is unique. Mr. Williams was moved into federal custody following his
14 *Alford* plea to the third-degree assault conviction but before his sentence.
15 As part of that plea deal, the State agreed to recommend that Mr.
16 Williams's sentence run concurrent with any yet-to-be imposed federal
17 sentence. *See* ECF No. 246-1 (Plea at 9) ("14 months, Run concurrent
18 w/DOJ"). Now that Mr. Williams is in federal custody, however, he will not
19 be returned to State custody until after service of his entire sentence. And,
20 as this Court is aware, it would be impossible for the State to run its
21 sentence concurrent to the already-discharged federal sentence.

22 **III. CONCLUSION**

23 For the foregoing reasons, Mr. Williams respectfully requests that the
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1 Court impose a sentence of ten months' imprisonment. He also requests
2 that the Court terminate his federal supervision. Both of these requests
3 comprise a sentence that is no greater than necessary serve the purposes
4 of punishment and are appropriate in this case.

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6 Dated: November 7, 2012.

7
8 Respectfully Submitted,

9 s/ Alison K. Guernsey

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15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on November 7, 2012, I electronically filed the
17 foregoing with the Clerk of the Court using the CM/ECF System which will
18 send notification of such filing to the following: ALEXANDER C.
19 EKSTROM, Assistant United States Attorney and DAVID MCCARY,
20 United States Probation Office.

21 s/ Alison K. Guernsey